NOES—18.

1 Mr. Kochikal P. Balakrishnan Tampi	10 Mr. C. O. Madhavan
2 „ C. V. Chandrasekharan	11 „ H. O. L. Marikar
3 „ K. George	12 „ R. Nilakanta Pillai
4 „ M. Govindan	13 „ Kayalam Paramesvaran Pillai
5 „ M. Govindan Pillai	14 „ R. Pichu Aiyangar
6 „ William Foster Inman	15 „ N. Ramakrishna Pillai
7 „ C. M. Joseph	16 „ K. Sankaralingam Pillai
8 „ K. N. Kesavan Namputiripad	17 „ T. C. Thommen
9 „ K. N. Kesava Pillai	18 „ G. B. E. Truscott

NEUTRALS—NIL.

President: For the motion 17, against 18, and neutral nil The amendment is, therefore, lost.

The question, now, is that Clause 2 shall form part of the Bill.

The motion was put to vote and carried.

The questions, that the Title and Preamble do form parts of the Bill, were, then, put to vote and carried.

The Title and the Preamble, were added to the Bill.

Mr. Kayalam Paramesvaran Pilial: There has been no amendment to the Bill and I beg to move that the Bill be passed.

Mr. M. Govinda Pillai: I second it.

President: The question is that the Bill be passed. The motion was put and carried and the Bill was passed.

THE TRAVANCORE REGISTRATION REGULATION (AMENDMENT) BILL.

Mr. Kayalam Paramesvaran Pillai: Sir, I beg to move that the Travancore Registration Regulation (Amendment) Bill, as passed by the Sri Mulam Assembly, be taken up for consideration.

The Bill seeks to amend Section 15 of the present Regulation which provides for the registration of titles to land created by courts or by transactions effected through courts. The present Section 15 runs as follows:—

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"15. When any civil court shall, by a decree or order, create, declare, transfer, limit or extinguish any right, title or interest of any person to or in any immovable property situate in any part of Travancore, such court shall cause a memorandum of the said decree or order to be sent to the Sub-Registrar or to every Sub-Registrar within whose Sub-District the whole or any portion of the property is situate and such memorandum shall, so far as may be practicable, describe the property in the manner required by Section 14; and the memorandum so received shall be filed in Book 1."

It will be noticed that the provision relates only to titles created by courts, such as court sales for instance. It has no application to attachments of properties made by courts.

Mr. E. P. Varghese: Will not the words 'limit.....any right' serve the purpose of the amendment now proposed by the Law Member?

Mr. Kayalam Paramesvaran Pillai: It is very doubtful. No doubt it can be argued that that expression in the provision includes attachments also. But the question is not free from doubt.

Mr. E. P. Varghese: Has any doubt arisen in the matter so far before a court of law?

Mr. Kayalam Paramesvaran Pillai: I remember one case reported at page 47 of 20 T. L. J. in which one learned Judge has expressed the opinion that the present provision includes attachments also; but his colleague did not agree in that. That is why I said that it is doubtful whether the present provision would cover attachments also. It is certainly safer to make the point clear.

I was submitting, Sir, that as it is, if a property is attached by a court, there is no means for an intending buyer of such property, or for anybody else who wants to enter into any transaction with respect to that property, to know of such attachment, unless the owner of such property himself is honest enough to inform the buyer of such attachment—which is not always likely—or such buyer goes to the court concerned after getting scent of the attachment and gets full information of it by illegitimate means. In the case of mortgages or hypothecations, or other encumbrances created upon property, they are all registered in the books of the Sub-Registrar's office, so that anyone interested in the property can easily go to the Sub-Registrar's office, search the books concerned and ascertain for himself what the encumbrances are on such property. Such search will not reveal any attachment of such property. Hence the proposed amendment.

Mr. E. P. Varghese: May I know whether it is the practice in civil courts to notify attachments of properties to the Sub-Registrar concerned?

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Mr. Kayalam Paramesvaran Pillai: No.

Mr. M. N. Paramesvaran Pillai: May I ask whether there is no means of ascertaining whether a particular property forms the subject-matter of a suit or not?

Mr. Kayalam Paramesvaran Pillai: There is; a fee for registering such information has, I think, to be paid to the court in respect of every property suit. But, I cannot say now whether the notice is sent immediately after the suit is filed, or only after it is decreed.

Mr. P. Padmanabhan Tampi: A fee of $5\frac{1}{4}$ fanams has to be deposited for that purpose.

Mr. Kayalam Paramesvaran Pillai: Yes, but is the notice not sent after the decree is passed? Or is it done on the filing of the plaint? That is what I was saying.

Mr. M. N. Paramesvaran Pillai: It is done before the decree is passed.

Mr. Kayalam Paramesvaran Pillai: I am not sure. In Madras, also, Sir, recently, a Bill for a somewhat similar purpose has been introduced by a non-official member.

Mr. E. P. Varghese: Is it not necessary to make the necessary provision in the Civil Courts' Guide also?

Mr. Kayalam Pramesvaran Pillai: After this Bill is passed, consequential provisions will be made by the High Court. They will issue the necessary instructions to the subordinate judiciary.

The Law's Delays Commissioner also has stated that the absence of a provision like the one now sought to be introduced was one of the reasons for a good deal of avoidable litigation. The High Court also say that the Registration Regulation should be amended in order to provide for a memorandum of every attachment being filed with the Sub-Registrar concerned immediately after an attachment is made.

On the merits, this is a very necessary provision. In its absence, people who want to advance money on properties hesitate to do so, because, if the property happens to be subject to any attachment, any right that any person might acquire subsequent to that attachment is only subject to such attachment. The Land Mortgage Bank, for instance, has been experiencing great difficulty in ascertaining whether properties offered to them as security are subject to attachments. Almost every form of encumbrance is registered in the Sub-Registrar's office, and can be easily ascertained by search there. Any amount of search will not reveal attachments

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of properties. Further, the proposed amendment, while it is going to be of immense use to the public in general, cannot be of any harm to anybody.

Mr. M. N. Paramesvaran Pillai: Is it the Law Member's idea that every time a fresh attachment is ordered by the court in execution, a memorandum of it must be furnished to the Sub-Registry office ?

Mr. Kayalam Paramesvaran Pillai: Yes; whenever a court issues an order of attachment such order must be immediately notified to the Sub-Registrar. This is what the amendment says—

> "...When any civil court shall at any stage of its proceedings make an order for the attachment, or for the raising of an attachment, of any immovable property....."

In fact, the idea is that even if an attachment order is cancelled such cancellation must be immediately communicated to the Sub-Registrar concerned. Every attachment, whether it is final or not, must be communicated to the Sub-Registrar concerned. That is what the amendment intends.

Mr. M. N Paramesvaran Pillai: Does not the Law Member think that it will work as a great hardship on the litigant public ?

Mr. Kayalam Paramesvaran Pillai: It may be a hardship on the party obtaining attachment orders, in the sense that, every time he applies for and obtains an order of attachment, he may have to pay a small fee for the communication of the order of attachment to the Sub-Registry office concerned. But, as against this small inconvenience or loss to just a few individuals, the proposed amendment will be of immense use to the public in general, say to the 50 lakhs of the people of Travancore. And, even as regards the people who may have to pay this small fee, it is no real loss, since such fees may be included in the costs of the case.

Mr. M. Govinda Pillai: I second it.

President: The motion before the House is that the Travancore Registration Regulation (Amendment) Bill, as passed by the Sri Mulam Assembly, be taken into consideration.

The motion was put to vote and carried.

Clause 1.

President: The question is that Clause 1 of the Bill shall form part of the Bill.

The motion was put to vote and carried and the Clause was added to the Bill.

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Clause 2.

Mr. G. Narayana Aiyar: Sir, I beg to move the following amendment :—

After the word "proceedings" omit the words "make an order for the" and insert the word "effects".

Sir, the Bill provides that, whenever the court passes an order of attachment, whether the attachment is actually effected or not, a memorandum about it must be sent to the Sub-Registry office concerned. Certainly, that is not the object of the mover of the Bill. I suppose it is only real attachments that have been effected, that intending buyers of property, or others interested, need know, and not mere *orders* of attachments which in some cases may not have been effected at all.

Mr. Kayalam Paramesvaran Pillai: Who effects the attachments, please?

Mr. G. Narayana Aiyar: An officer of the court concerned.

Mr. Kayalam Paramesvaran Pillai: Amin?

Mr. G. Narayana Aiyar: Yes.

A mere order of attachment is of no effect and of no consequence unless it is actually and legally carried out on the spot by beat of tom-tom at the spot, etc., by the Amin. At page 749 of XIX T. L. J., it has been ruled by Their Honours, the Judges of the Travancore High Court, that a mere order of attachment will not have the effect of actual attachment unless the same is actually effected by the Amin of the court in accordance with the provisions contained in Order 21, Rule 52 of the Civil Procedure Code.

Mr M. N Paramesvaran Pillai: May I ask whether such provision in the Civil Procedure Code will apply to attachments made on hypothecation decrees?

Mr. E. P. Varghese: May I point out that what we are concerned with is immovable property?

Mr. G. Narayana Aiyar: We are now concerned with only attachment of immovable property and nothing else. Section 5 of the Civil Procedure Code says that when an attachment is effected or made, any subsequent alienation shall be void as against the attachment. How an attachment is to be effected is defined in Order 21 Rule 52, so that the man who goes to the Sub-Registry office may know that there is a proper attachment. Unless the words that I propose are inserted, the rule, as it stands, may not have the desired meaning. It simply says—"when any civil court shall at any stage of its proceedings make an order..... ..."

Mr. Komilezhathu Sankaran: How are you going to ascertain whether an order of attachment has been effected or not? Who is the authority to decide whether it has been effected?

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Mr. G. Narayana Aiyar: It is effected by the Amin taking out the process from the court to the spot, proclaiming by beat of tom-tom and informing the public that the property is in the custody of the court and under attachment.

Mr. Komilezhathu Sankaran: May I know whether attachments are really effected in all cases?

Mr. G. Narayana Aiyar: Yes. All official acts are presumed to be conducted properly. Cases may also arise when, after the order of attachment is passed, the party does not deposit the necessary batta for conducting the attachment or the Amin could not effect the attachment for want of proper description in the schedule or, before the attachment is effected, the parties effect a compromise. So, if the Clause is maintained as it is, I submit the object of the Bill will be defeated. The communication to the Sub-Registry office ought to be sent only after the attachment is effected. Sir, I submit that the House may be pleased to support my amendment.

Mr. K. P. Nilakanta Pillai: I second it.

Mr. Kayalam Paramesvaran Pillai: I am afraid I cannot accept the amendment. If it is accepted, a considerable portion of the beneficial object that is intended by this Bill will be lost. The order of attachment is made by the court, while the attachment is effected by an officer of the court, an Amin.

Mr. G. Narayana Aiyar: May I know from the member what will be the effect of a memorandum to the Sub-Registry office soon after the order of attachment when no attachment has been subsequently effected?

Mr. Kayalam Paramesvaran Pillai: In that case, the memorandum will have no effect.

Mr. G. Narayana Aiyar: Is it not a nullity?

Mr. Kayalam Paramesvaran Pillai: I am not prepared to concede that. However, even conceding it is a nullity, the memorandum about the cancellation of the order may be sent to the Sub-Registry office later on.

Mr. G. Narayana Aiyar: Is such a procedure not costly to the party?

Mr. Kayalam Paramesvaran Pillai: That does not necessarily follow. Ordinarily, it must be expected that the attachment will necessarily follow the order to attach. The High Court may pass a rule that whenever an application for attachment is made, the party shall pay along with the application a fee for the registering of the order of attachment as also a fee for the registering of the cancellation of the attachment. My point is that when the order of attachment is passed it should forthwith be communicated to the Sub-Registry office.

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Mr. G. Narayana Aiyar: May I know whether the carrying out of the attachment order by an officer of the court loses any sanctity?

Mr. Kayalam Paramesvaran Pillai: No. But the controversy may arise whether the attachment was really effected.

Mr. G. Narayana Aiyar What is the procedure Are such attachments presumed to be genuine or not?

Mr Kayalam Paramesvaran Pillai: They are presumed to be genuine. But I am saying that it is still a matter of controversy whether the attachment has really been effected and it will be very difficult to say that the attachment has been effected in proper form or no, when the question is raised by the other party.

Mr. E. P. Varghese: May I point out that the mover of the amendment means that the communication to the Sub-Registry office need be made only after the Amin reports the fact of the attachment having been effected?

Mr. Kayalam Paramesvaran Pillai: That is not what the amendment purports to be.

Mr. G Narayana Aiyar: That is what I mean.

Mr. Kayalam Paramesvaran Pillai: Even if it be so, I am not prepared to accept the amendment.

Mr. Kochikal P. Balakrishnan Tampi: May I know from the member whether some method is not prescribed in the Civil Courts Guide as to the manner in which the attachment should be effected?

Mr. Kayalam Paramesvaran Pillai: Yes. The point to be considered is whether we want to send a notice to the Sub-Registry office immediately after the order is passed.

Mr. M. N. Paramesvaran Pillai: May I know whether the application will not be dismissed for default of payment of fees within the prescribed time, even after the order for attachment is passed?

Mr. Kayalam Paramesvaran Pillai: In 99 cases out of 100, the process fees will be paid and the properties will be attached. In the case of dismissal for default, the order of dismissal also will be communicated to the Sub-Registry office. That will be convenient to every body.

Mr. N. Ramakrishna Pillai: When an order of attachment is communicated; there is no need for a further order that the attachment has been effected being communicated.

Mr. Kayalam Paramesvaran Pillai: No. Only one communication is sent.

Mr. V. S. Arumukham Pillai (*Tovala* cum *Agastiswaram*): Suppose an order for attachment is passed, and the next pay, after it is passed, the party executes a document.

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Mr. Kayalam Paramesvaran Pillai: The party that pays money may lose. That is one reason why I propose that the order must be communicated immediately after it is passed. I am not prepared to wait till the order of attachment is actually effected. What I want is that when a person wants to deal with a particular property and goes to the Sub-Registry office he must know whether there has been an attachment order or no on the property. He may make further enquiry for himself as to what has become of the order whether attachment has actually been effected or whether it has been cancelled.

Mr. G. Narayana Aiyar: What is the nature of the order that the court should communicate?

Mr. Kayalam Paramesvaran Pillai: That an order of attachment has been passed by the court should be communicated. If an attachment order is passed on the 1st of a month, naturally the notice will go within, say, three days and the attachment will not ordinarily take place within those three days. By the time the attachment will be actually effected, notice also must have gone to the Sub-Registry office. That is what I want.

Mr. E. P. Varghese: Is there any provision that the order of attachment should be communicated within a specified time?

Mr. Kayalam Paramesvaran Pillai: No.

Mr. G. Narayana Aiyar: May I draw the attention of the honourable member to a few observations made by Their Honours in the case I have already referred to? Their Honours say.—

> "It was strenuously contended on behalf of the respondent that as the attachment was ordered on 15-11-1099, it should be taken to have become effective from that date. Considering that the same related to immovable properties the attachment could become effective only after the same was effected."

Mr. Kayalam Paramesvaran Pillai: That observation I quite understand. We are now legislating and we must try to safeguard in every way. Apart from that observation, the point is this. Unless the order of attachment is communicated to the Sub-Registry office on that very date or very soon after, a person dealing with that property may not be able to know the fact of the order of attachment.

Mr. E. P. Varghese: Does the amendment propose to make it incumbent?

Mr. Kayalam Paramesvaran Pillai: The High Court will issue the necessary instructions to the subordinate courts.

Mr. G. Narayana Aiyar: What is the time within which *yadasis* are sent?

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Mr. Kayalam Paramesvaran Pillai: I do not think that any time is fixed, but I believe that the courts have stated that they must go immediately.

I request the House not to confuse the issue. The question is simply this. Once an order of attachment is passed, is it advantageous to the public that the Sub-Registry office is informed about it immediately or after a few days after the property is attached? It is certainly convenient to the public if the communication is made immediately. But if the notification is delayed until after the actual effecting of the attachment, the people who deal with such property may suffer because they will have no notice of the attachment even after a search in the Sub-Registry office.

Mr. P. Padmanabhan Tampi: May I know from the member whether the attachment is complete before it is effected?

Mr. Kayalam Paramesvaran Pillai: I will take it that it is not complete, though another view is possible. I am not questioning that point now.

Mr. E. P. Varghese: May I know from the member what purpose such a communication will serve?

Mr. Kayalam Paramesvaran Pillai: The order may be passed say on the first of the month and on the second the notice will go to the Sub-Registry office and on the third probably the attachment may have been effected. Any person who goes to the Sub-Registry office on the second will see that an order of attachment has been passed and he will then enquire whether the attachment has been actually effected. But if the notice of the order is not sent to the Sub-Registry office, he will not know of the order.

President: The motion is that in Clause 2 of the Bill the words "make an order for the" after the word "proceedings" be omitted and the words 'effects" be inserted in that place.

The motion was put to the vote of the House and declared lost.

Mr. G. Narayana Aiyar: Sir, as my second amendment is consequential to the first amendment and as the first amendment has not been passed, I do not move the second amendment.

The following amendment was not moved :--

For the words "or for the raising of an attachment" insert the words "or make an order for the raising of an attachment".

Mr. G. Narayana Aiyar: Sir, I move that after the words "the court shall likewise" the words "within two weeks from the date of effecting the attachment, or passing an order for the raising of an attachment, or an order operating in effect as an attachment, or as the raising of an attachment" be inserted.

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There appears to be no time-limit fixed in the Bill for the communication of the order of attachment to the Sub-Registrar's office. The object of this amendment is to see that intimation is given as early as possible. In practice we find that months are taken before these *yadasts* are sent to the Sub-Registry office. So, in view of the urgency of this piece of legislation and the object of this measure it is highly advisable to have a time-limit fixed.

Mr. M. N. Narayana Menon (*Kottayam*) : I second it.

Mr. Kayalam Paramesvaran Pillai : Sir, I have to object to this amendment for a formal reason as well as a substantial reason. This House has already accepted the principle that notice should go to the Sub-Registry office immediately after the order of attachment is passed and not after it is effected. Now, if you say that the order should be communicated only some time after effecting the attachment it will practically go against the principle already accepted. I will therefore ask the mover of the amendment to withdraw it.

Mr. G. Narayana Aiyar : I do not press my amendment.

The amendment was, by leave of the House, withdrawn.

President : The question is that Clause 2 shall form part of the Bill.

The motion was put to vote and carried and the Clause was added to the Bill.

The question that the Preamble and the Title do form parts of the Bill was then put to vote and carried.

Mr. Kayalam Paramesvaran Pillai : I beg to move that the Bill as approved by the House be passed.

Mr. M. Govinda Pillai : I second it.

President: The question is that the Travancore Registration Regulation (Amendment) Bill as now settled by the House be passed.

The motion was put and carried and the Bill was passed.

The Council adjourned at 1-2 P. M. and reassembled after lunch at 2 P. M., with Mr. N. Ramakrishna Pillai, one of the panel of Chairmen, in the Chair.

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